

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Require  
California Natural Gas and Electric Utilities to  
Preserve Interstate Pipeline Capacity to  
California.

Rulemaking 02-06-041  
(Filed June 27, 2002)

(Phase II)

**SCOPING MEMO AND RULING  
OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE  
FOR PHASE II OF THIS PROCEEDING**

**Summary**

Pursuant to Rules 6(b)(3) and 6.3 of the Rules of Practice and Procedure,<sup>1</sup> this ruling sets forth the procedural schedule, designates the principal hearing officer, and addresses the scope of Phase II of the proceeding following a prehearing conference (PHC) held on September 10, 2002.

**Background**

On June 27, 2002, the California Public Utilities Commission (Commission) issued an Order Instituting Rulemaking (OIR), Rulemaking (R.) 02-06-041, to propose rules requiring California's natural gas and electric utilities to acquire capacity on the El Paso Natural Gas Company (El Paso) interstate pipeline. The OIR was in response to the May 31, 2002, Federal Energy Regulatory Commission

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<sup>1</sup> Unless otherwise indicated, all citations to sections refer to the Public Utilities Code and citations to rules refer to the Commission Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

(FERC) order (May 31 Order) indicating that marketers currently serving California may turn-back up to 725 million cubic feet per day of firm capacity on El Paso's interstate pipeline with primary delivery point rights at the California border to El Paso's East of California customers.<sup>2</sup> As a result of the May 31 Order, unless California's replacement shippers or utilities acquired the turned back capacity, it might have been permanently lost from California.

Therefore, the Commission issued two proposed rules in the OIR; the first rule proposed requiring the natural gas and large electric utilities to each sign up for a proportional amount of the turned back capacity not subscribed to by replacement shippers serving California, and the second rule proposed finding just and reasonable and pre-approving the California utilities' subscription to the turned back capacity. The utilities were directed, and other parties were invited, to file comments on the proposed rules.

After reviewing the comments and reply comments, on July 17, 2002, the Commission issued Decision (D.) 02-07-037 establishing the rules as proposed, with an addition that the utilities existing capacity rights on interstate pipelines is found to be just and reasonable. That decision also specified that there would be a Phase II of the proceeding and set forth potential issues for exploration in that phase.

## **Phase II**

A PHC was held on September 10, 2002, and prior to that hearing, the parties conducted a meet-and-confer telephone conference<sup>3</sup> to discuss topics to be

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<sup>2</sup> 99 FERC 61, 244.

<sup>3</sup> The four applicant utilities met on May 10, 2002, for a meet-and-confer telephonic conference, and then telephonically met again on May 13, 2002, to include ORA and WSPA.

included in Phase II and to propose a procedural schedule. Southern California Edison Company (Edison), Pacific Gas and Electric Company (PG&E), and Southwest Gas Company filed a Joint PHC Statement proposing that the Phase II issues did not require evidentiary hearings and could be addressed through comments and utility-specific workshops, if necessary. Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), the Office of Ratepayer Advocates (ORA), the Southern California Generation Coalition (SCGC), and the Canadian Association of Petroleum Producers (CAPP) filed a Joint PHC Statement suggesting that five days of evidentiary hearings were necessary to settle the Phase II issues. BP Energy Company and Chevron U.S.A. Inc (BP and Chevron) also filed a PHC Statement with a proposed schedule for seven days of evidentiary hearing.

At the PHC, appearances were taken, parties stated their respective positions and the issues of concern to them in this proceeding, discussed a procedural schedule, and suggested topics for inclusion in Phase II. A service list for the proceeding was established.

## **Phase II Topics**

### **A. Topics That Are Utility Specific**

#### **1. Compliance**

Whether the utilities have fully complied with D.02-07-037 in terms of acquiring the amounts or percentages of El Paso capacity at the delivery points indicated in that decision.

#### **2. Cost Allocation**

How should the costs of turned-back capacity and pre-existing capacity rights on interstate pipelines be allocated among utility customers and what is (are) the appropriate mechanism(s) for recovery in rates of these costs?

### **3. Adjustments to Current Incentive Mechanisms**

How should a utility's respective gas cost incentive mechanism be adjusted to properly account for both existing and recently acquired interstate capacity? For example, should PG&E's Core Procurement Incentive Mechanism be modified?

## **B. Topics That Apply to All Utilities**

### **1. Date for Cost Recovery**

What is the appropriate date that the utilities can begin recovering the costs associated with their subscription to turned-back capacity (or released capacity), as well as costs associated with their pre-existing capacity rights on interstate pipelines, to the extent that the utilities have fully complied with D.02-07-037?

### **2. Short-Term Capacity Releases**

Should even short-term capacity releases<sup>4</sup> of interstate capacity (in excess of the utilities' needs) to customers be allowed in summer and winter peak times? If such releases are allowed, how will the releases be conducted and to whom should it be available? For example, should the Commission direct SoCalGas to first make available the interstate pipeline capacity that reverts back to its control, subject to FERC's regulations on releasing capacity, to its wholesale customers and other gas utilities that procure gas for core customers?<sup>5</sup> What will

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<sup>4</sup> Short-term capacity release will be defined as capacity released by the utilities to another entity for a period of less than one year.

<sup>5</sup> See Conclusion of Law 2 from D.02-08-065, the SoCalGas/SDG&E core portfolio decision.

be the reasonableness standard for approval of the utilities' conduct involving short-term capacity releases?

### **3. Future Adjustments to Interstate Capacity Holdings**

Under what criteria will the Commission authorize adjustments to interstate capacity holdings that the utilities acquired pursuant to the Commission's order in D.02-07-037? Under what conditions will a utility be permitted to enter into long-term<sup>6</sup> capacity releases?

This list is not meant to be inclusive, or to foreclose the inclusion of additional topics as they arise during the course of discovery and further processing of the proceeding.

#### **Discovery**

The Commission will not impose a discovery plan on the parties for this phase of the proceeding. Proponents may make reasonable discovery requests and recipients should strive to comply with them, both in a timely fashion. The parties should attempt to resolve any discovery disputes with a good faith meet and confer. If that attempt does not resolve the dispute, the parties are to either e-mail or conference call the ALJ for resolution of the dispute. Written motions may only be filed if the parties' meet- and-confer session and the ALJ's conference are both unsuccessful in resolving the dispute. The Commission generally looks to the California Code of Civil Procedure for guidance in resolving discovery disputes. The ALJ's e-mail address is [cab@cpuc.ca.gov](mailto:cab@cpuc.ca.gov).

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<sup>6</sup> Long-term capacity release will be defined as a release of capacity for a period greater than a year.

**Schedule**

The procedural schedule proposed by the parties at the time of the PHC is no longer timely. The following schedule is adopted.

<u>DATE</u>	<u>EVENT</u>
January 24, 2003	Compliance filings by utilities <sup>7</sup>
February 7, 2003	Initial testimony by utilities
March 21, 2003	Intervenor testimony
April 4, 2003	Rebuttal Testimony
April 28 – May 2, 2003	Hearings

### **Settlement**

There are three Phase II topics that are utility specific: compliance, cost allocation, and current incentive mechanisms. These issues involve adjudicative facts and will require hearings. The other Phase II topics, date for cost recovery, short-term capacity releases, and interstate capacity holdings only involve legislative facts, general facts that help the Commission decide questions of law and policy, and can be addressed through briefs. Parties are encouraged to attempt to settle the utility specific issues. If any utility reaches a settlement that is acceptable to the other parties, meets the requirements of Article 13.5 of the Commission's Rules of Practice and Procedure, and the settlement is acceptable to the Commission, that utility may not have to participate in the evidentiary hearings.

### **Hearing Preparation**

If hearings are necessary, they will go forward the week of April 28, 2003. In preparation for the hearings, any party that has not resolved its contested

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<sup>7</sup> D.02-07-037 did not specify a date certain for each utility's compliance filing. Edison, Southwest Gas, and PG&E have already made their respective compliance filings. If any of these filings require an update, the update is due January 24, 2003.

issues is ordered to participate in a pre-hearing meet-and-confer session <sup>8</sup> no later than April 23, 2003, for the purpose of identifying the principal issues on which the hearings will focus, key disputes, and any stipulations or settlements. In addition, the parties are to determine the order in which the utilities are to proceed on the contested issues.

To the extent feasible, parties should exchange exhibits in advance of this meet and confer so any objections can be addressed at that time.

Parties should also use the meet-and-confer to discuss witness schedules, time estimates from each party for the cross-examination of witnesses, scheduling concerns, and the order of cross-examination. The first morning of hearings on April 28, 2003, will begin at 10:00 a.m., but the time may be adjusted on subsequent days according to the participants needs.

Parties should serve, but not file, proposed testimony and rebuttal testimony. Before post-hearing briefs are filed, the parties must agree on an outline, with the ALJ's guidance, and use that outline for the briefs and reply briefs.

Finally, the parties should comply with the Hearing Room Ground Rules set forth in Appendix A hereto.

### **Principal Hearing Officer**

In accordance with Rule 5(k) and (l) of the Commission's Rules, ALJ Carol Brown is designated as the principal hearing officer for this proceeding.

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<sup>8</sup> The parties may meet telephonically if it is more convenient than an in-person meeting.



### **Ex Parte Rules**

Ex parte communications in this ratemaking proceeding are subject to §1701.3(c) and Rule 7(a)(1) and (c).

### **Service List**

The official service list is now on the Commission's web page. Parties should confirm that the information on the service list and the comma-delimited file is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Parties shall e-mail courtesy copies of all served and filed documents on the entire service list, including those appearing on the list as "State Service" and "Information Only." E-mail is not a substitute for mail service.

#### **IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. The principal hearing officer in this proceeding pursuant to Rules 5(k) and (l) is Administrative Law Judge Carol Brown.
4. Ex parte communications are subject to Pub. Util. Code § 1701.3(c) and Rule 7(a)(1) and (c) of the Commission's Rules of Practice and Procedure.
5. Parties shall follow the service list rules as set forth herein.

6. Parties shall comply with the Hearing Room Ground Rules set forth in Appendix A hereto.

Dated December 26, 2002, at San Francisco, California.

/s/ LORETTA M. LYNCH

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Loretta M. Lynch  
Assigned Commissioner

/s/ CAROL A. BROWN

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Carol A. Brown  
Assigned Administrative Law Judge

## **Appendix A**

### **Hearing Room Ground Rules**

1. All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony shall not be filed with the Commission's Docket Office.
2. Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room. (Present estimate: 5 copies.) The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit. Parties should pre-mark exhibits when feasible.
3. As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.
4. Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.
5. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.
6. Partial documents or excerpts from documents must include a title page or first page from the source document; excerpts from lengthy documents should include a table of contents page covering the excerpted material.
7. Motions to strike prepared testimony must be made at least two working days before the witness appears, to allow the ALJ time for review of the arguments and relevant testimony.
8. Notices, compliance filings, or other documents may be marked as reference items. They need not be served on all parties. Items will be marked using letters, not numbers.

9. No food is allowed in the hearing room; drinks are allowed if you dispose of containers and napkins every morning and afternoon.

**(END OF APPENDIX A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge for Phase II of This Proceeding on all parties of record in this proceeding or their attorneys of record.

Dated December 26, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.